

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

JOHN WELDON BURNS,

Plaintiff,

v.

Civil Action No. 1:07CV7

DOMINIC A. GUTIERREZ, SUSAN S.
MCCLINTOCK, DR. RAMIREZ, MS.
BLANCO, DR. WATERS, LEWIS
BRESKOACH AND V. FERNANDEZ,

Defendants.

ORDER DENYING RE-FILED MOTION TO DISMISS

On November 7, 2007, this Court denied the plaintiff's motion to dismiss (dkt. no. 30) under Fed. R. Civ. P. 42(b) for failure to state the proper Rule of Civil Procedure. In that Order, the Court advised the plaintiff that, if he re-filed the motion, he should cite the proper Rule of Civil Procedure, specify the type of dismissal requested, and state the grounds for the motion.

On November 14, 2007, the petitioner re-filed the motion under Fed. R. Civ. P. 42(a). He did not, however, specify the type of dismissal requested or state the grounds for the motion. Once again, the Court denied the motion for failure to state the proper Rule of Civil Procedure (dkt. no. 33). Once again, the Court reminded the plaintiff that, if he re-filed the motion, he should cite the proper Rule of Civil Procedure, specify the type of dismissal requested, and state the grounds for the motion.

Before the Court is plaintiff's third attempt, this time under Fed. R. Civ. P. 41(a). Once again, despite this Court's repeated

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instructions, the plaintiff has failed to specify the type of dismissal requested or state the grounds for the motion.

The Court finds that Fed. R. Civ. P. 41(a)(1) does not apply because the defendants have already filed a motion for summary judgment (dkt. no. 26) and the defendants have not signed the motion for dismissal. Also, the Court finds that the plaintiff has failed to state any proper grounds for dismissal under Fed. R. Civ. P. 41(a)(2).

Consequently, the Court **DENIES** plaintiff's motion to dismiss (dkt. no. 34). **The Court reminds the plaintiff, that, if he re-files the motion, he should specify the type of dismissal requested and state the grounds for the motion. The Court further advises the plaintiff that if he files another motion to dismiss without stating the grounds for the motion, the Court will construe that motion as a motion to dismiss with prejudice.**

The Clerk is directed to transmit a copy of this Order to the *pro se* plaintiff and appropriate government agencies.

Dated: November 21, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE